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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY AGUILAR
ANDRADE,

Defendant and Appellant.

B298712

(Los Angeles County
Super. Ct. No. GA096966)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael D. Carter, Judge. Affirmed and remanded with directions.

Robert L.S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Noah P. Hill and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

In an information filed by the Los Angeles District Attorney's Office, defendant and appellant Timothy Aguilar Andrade was charged with murder (Pen. Code, § 187, subd. (a)).¹ The information also alleged that defendant personally used a deadly and dangerous weapon, a knife, pursuant to section 12022, subdivision (b)(1).

Defendant pled not guilty. After trial, the jury found him guilty of first degree murder and found the personal use of a deadly and dangerous weapon allegation true. The trial court sentenced defendant to 25 years to life for the murder conviction and one year for the deadly weapon allegation, for a total state prison term of 26 years to life. He was awarded 1,382 days of presentence custody credit.

Defendant timely appealed. On appeal, he argues: (1) His conviction of first degree murder is not supported by substantial evidence; (2) The true finding on the deadly and dangerous weapon allegation is not supported by substantial evidence; and (3) He is entitled to an additional day of presentence custody credit because the trial court erroneously gave him credit for 1,382 days as opposed to 1,383 days.

We agree with the parties that defendant is entitled to an additional day of presentence custody credit. In all other respects, the judgment is affirmed.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

FACTUAL BACKGROUND

I. *Prosecution evidence*

A. The murder of Brandi Nicole Carrasco (Carrasco)

In August 2015,² Brian Lowe (Lowe) lived in Burbank with his elderly mother. He met defendant online some time that year. Lowe and defendant had a brief sexual relationship. Defendant was dating Carrasco that summer. Lowe allowed defendant and Carrasco to stay at his house. They would sleep in Lowe's room or in the study. Lowe's girlfriend at the time, Kelly Qubain (Qubain),³ would also stay over.

On August 22, defendant and Carrasco stayed over at Lowe's house, as did Qubain. At around 2:00 a.m. on August 23, Qubain heard defendant and Carrasco fighting in the study. Lowe did not hear anything. Carrasco was yelling, "Let me go. Let me go."

Defendant was upset because he thought Carrasco was making a video recording of him. He accused her of being a "nar[c]." Qubain knocked on the study door, and everything went quiet. She asked Carrasco if she needed help, and defendant responded that Carrasco was okay. A cell phone battery was slid under the study door.

In the afternoon of August 23, Carrasco and Qubain went clothes shopping while defendant and Lowe remained at the house. Defendant called Qubain and told her that Lowe was choking. Qubain and Carrasco returned immediately to Lowe's

² All relevant events occurred in 2015.

³ Kelly Qubain also goes by the name Mark Qubain.

house, only to find out that Lowe was not choking. Carrasco believed that defendant called her as a ruse to get her to come back to Lowe's residence.

Afterward, defendant and Carrasco went for a hike. Qubain left Lowe's house around 4:00 p.m. and sat in her car, which was parked in front of Lowe's house. At 4:51 p.m., Qubain called Lowe from in front of his house to see if he wanted to get together later.

Defendant and Carrasco eventually returned to Lowe's house. They were in their room, arguing about a cell phone. Lowe was in the kitchen preparing food for his mother. At around 5:00 p.m., he told defendant and Carrasco to keep it down. About 15 minutes later, defendant left the house and went to his car. At around 7:20 p.m., Lowe went out to the car. About 20 minutes later, he gave defendant his cell phone. Then, at around 7:52 p.m., defendant drove away; he still had Lowe's cell phone.

Lowe was angry that defendant had left with his cell phone. He called the phone several times and left voice messages for defendant. He was frustrated and cursing. Lowe called the phone seven times, from 8:03 p.m. to 8:59 p.m. There was a gap in calls from 8:08 p.m. to 8:52 p.m. During that time, Carrasco was trying to help Lowe download his contacts from Google Voice. They were unsuccessful. Lowe gave up, went outside to his backyard, and smoked a cigarette. He was outside for about 45 minutes.

Lowe went back inside and did not see anyone else in the house. He was washing the dishes in the kitchen when defendant walked in. Defendant was wearing a hoodie and black shorts, and he held a knife with a green handle in his hand. He

told Lowe to remain quiet, that he would be right back, and that Lowe should not go anywhere. Lowe told the police that defendant also said that if Lowe was not quiet, his family would “get[] it.” Defendant went down the hallway towards Lowe’s room.

Lowe went back outside and remained there for about 30 minutes. He came back inside the house and browsed food ads in a mailer for about 10 minutes. He walked to his room. Lowe thought that defendant was still there. Lowe looked in his bedroom and saw Carrasco’s body. He was in disbelief. He stepped out of the room, prayed that what he had seen was not real, and went back into the room. Carrasco was not moving or breathing and appeared to be dead. Lowe checked on his mother, who was asleep in her room, and then called the police.

Lowe was concerned about Qubain’s safety because he believed that defendant was the person who had killed Carrasco and thought defendant might harm Qubain. Lowe was taken to the police station where he was interviewed by a detective. Throughout the interview, he denied that defendant was in the house at around the time of the murder. Lowe lied because he was afraid of defendant and was concerned that what had happened to Carrasco could happen to him or his family. After he learned that defendant was in police custody and had confessed to the murder, Lowe told the police that defendant had been in the house when Carrasco was murdered.

Officer Blaine Shifley of the Burbank Police Department responded to a radio call about an assault with a deadly weapon at Lowe’s house at 9:45 p.m. on August 23. Carrasco’s body was in Lowe’s bedroom. It was “pretty evident” that she was dead.

There were several lacerations to the front of her throat, her body was rigid, and the blood on her body was dry.

A few days prior to August 24, Qubain was in defendant's car and saw several kitchen knives on the back seat. Defendant parked the car and then hid knives on top of the tires.

Gerardo Viesca (Viesca) lived next door to Lowe. On August 23, a red Honda CRV was parked in front of Lowe's house. Viesca's daughter's car had been hit in the bumper overnight, and the Honda was parked right behind it. Viesca saw a knife wedged against the rear tire on the driver's side of the Honda, and a knife lying on the ground next to the tire. Viesca saw the CRV drive away around 8:00 p.m. that night.

B. Police investigation

Defendant is related to Richard Ramos Rodriguez (Rodriguez). He has known defendant since he (defendant) was four or five years old. Defendant called Rodriguez "Big Dog" or "Dad." Rodriguez would not let Carrasco in his house when he was not there because she had said that the house was going to be raided, and that the police would come after defendant. Defendant believed that Carrasco was going to send people after him.

Defendant wrote a note on August 16 and gave it to Rodriguez, who did not read it until the police interviewed him on August 24. The name "Brandi Schul" was on the note. The note stated, "Hey, Big Dog. I got to take care of things. I got to get to the bottom of this. I'm going to [Lowe's house]. If I don't check in tomorrow, I love you, brother. Please let the family know that I love them as well."

Around 2:00 p.m. on August 24, Los Angeles County Sheriff's Deputy Michael Lugo was on patrol in East Los Angeles

when he saw defendant walking in the 3500 block of Terrace Drive. He took defendant into custody for outstanding traffic warrants. That day, an officer from the Burbank Police Department transported defendant to the Burbank police station.

Defendant's car was located in East Los Angeles in the evening of August 24. It was parked two houses away from Rodriguez's house. A note was on the driver's seat. It stated, "Dear God, my heavenly father, please tell my family that I love them. Please forgive me of my sins. Tell my mother and father that I will see them in heaven. I beg of you to save me a place in heaven. I'm done running. I'm ready. Tim Andrade."

C. Defendant's interview with the police

Burbank Police Detective Jamal Childs interviewed defendant for about two hours at the police station on August 24. A video recording of the interview was played for the jury.

Defendant thought he had been arrested for his outstanding warrants. He and Lowe got high together. Defendant was bisexual but felt it was an "abomination to the lord."

Defendant said he was not dating anyone. He denied knowing Carrasco, and he denied several times that he was at Lowe's house on August 23. Defendant ultimately admitted that he knew Carrasco. He met her at a McDonald's in Santa Fe when he dropped some drugs near her, and she asked if they belonged to him. Defendant and Carrasco would hang out at Lowe's house. Defendant was "coming down off of dope" on August 23. He washed his car at Lowe's house in the afternoon, and then he left because Carrasco did not want to go anywhere with him. Defendant went to his godfather's house.

Carrasco thought that defendant was cheating on her and would call him while he was working. He had had feelings for her, but they had “faded away.” At first, defendant denied that he and Carrasco fought about a cell phone when they were at Lowe’s house on August 23. He eventually admitted that they fought about a cell phone because Carrasco wanted to activate it for him and he wanted to do it himself. Carrasco was “kicking and screaming” and Lowe came in and told them to be quiet. Defendant claimed that Lowe “flexed” on Carrasco and almost hit her. Defendant wanted her to quiet down because there were a lot of drugs in the house and he did not want the police to show up. Carrasco eventually calmed down, and defendant left.

Defendant was then pressed to tell the interviewer what had occurred at Lowe’s house on August 23. He said that Carrasco went “home,” and that he had “blessed” her. “Home” meant heaven. When asked how he did it, defendant replied, “The Lord’s will.” Defendant “blessed” her out of love and admitted that he loved her from the moment he met her. Defendant wanted to go with Carrasco and was “ready to be right with God.”

Defendant admitted he had “touched” Carrasco, and he knew that her throat had been cut. He denied that things got out of control and reiterated that Carrasco’s death was God’s will. God wanted Carrasco to go home because she used drugs, and it was not “pure.” The interviewer asked, “Is that why you cut her throat,” and defendant responded, “I touched her with the love of God.” Defendant reiterated that he wanted to go with Carrasco. When asked what he used to cut Carrasco, defendant said that he used “[a] healing hand, so to speak.” Defendant would not admit that she was dead; rather, he believed that she had been reborn.

Defendant reiterated that he had sent Carrasco home with the touch of God. He was emotional and cried when shown pictures of Carrasco's body from the crime scene. Defendant was sorry for what he had done but said that he did not mean for it to happen. He and Carrasco were going to get married, and he wanted to accept responsibility for what he had done to her. Defendant had good intentions and acted out of "fear of God, hope, and love for my lady."

Lowe was in the kitchen of his house when defendant killed Carrasco, but Lowe did not witness the murder. Carrasco did not scream or make any noise. Defendant "gave her a quick stab and that was it." He had parked his car down the street and around the corner because he believed "it was supposed to happen that way." When asked if he had planned to kill Carrasco that day, defendant replied, "I didn't want to do it but, you know, for the children, for my family because she is, um [unintelligible] for the kids." When he learned that the police had Lowe in custody, defendant said it was not right "[b]ecause I left [a] mess at his house. I accept full responsibility for my actions. I should have cleaned up, but I was, I was, I was scared. I didn't want to, I didn't want to send her home. I wish I could have went with her, but it was the will of God and the fear of God. It was out of hope and love."

Defendant wrote a note to Carrasco's family at the suggestion of one of the police officers. The note stated: "To the family of Brandi Carrasco, I'm terribly sorry you all didn't get to say goodbye to Brandi. Because it was God's will out of faith, hope, and love, I sent her home. I touched her deeply with the hand of God. I loved her and love you all. Please forgive me for not giving her a chance to say goodbye. I'm hoping you don't hate

me for this. She's in a better place now. Now is my time to get right with the Lord. As God appointed me [to] do his will, out of fear of the Lord, it had to happen. I am right with the Lord now, and hopefully I'll be with her soon. We're going to get married in October. I'm ready to go home as well. Thanks to her I'm right with the Lord now. Sincerely, Timothy Andrade.”

Defendant told the police that he threw the weapon that he used to kill Carrasco—a black and silver knife—out of his car window as he drove north on Interstate 5, near the Hollywood Way exit.

D. Video surveillance footage from the night of the murder

The police obtained video surveillance footage from a house across the street from Lowe's. Detective Harry Terrill had reviewed the footage and commented on it as it was played for the jury. The video was from August 23, and began at 8:30 p.m.⁴ A figure approached Lowe's house at 8:56 p.m., and at 8:59 p.m., a figure ran from the house.

Additional video footage, which was obtained from Lowe's neighbor's house, was also shown to the jury. At 8:55 p.m., a figure dressed in baggy shorts walked towards Lowe's house. At 8:59 p.m., the same figure ran away from Lowe's house. Once again, he carried an object in his hand. The figure was 5 feet 9 inches tall, the same height as defendant.

Surveillance footage of Interstate 5 was also played for the jury. At around 9:07 p.m., a maroon Honda CRV (defendant's car) ran a red light and entered the northbound freeway from

⁴ The timestamp on the video appeared to be close in time to when the events depicted in the video actually occurred.

Buena Vista Street. The murder weapon was found one-quarter to one-half mile from that location.⁵

E. Forensic evidence and autopsy findings

Senior criminalist Jill Soumas arrived at Lowe's house at around 4:50 a.m. on August 24. Carrasco's body was in the northeast bedroom. There was an exit in the kitchen and the living room had a sliding glass door that opened to a covered patio. The kitchen looked like someone had been cooking. Food was out and there were a lot of knives on the counter. A driver's license with the name "Brandi Nicole Carrasco" was in the bedroom. Carrasco had wounds to her neck and right shoulder.

Dr. Matthew Miller, a medical examiner with the Los Angeles County Coroner's Office, performed an autopsy on Carrasco on August 26. She had a stab wound on her right arm near her shoulder, and a stab wound in the area where the lower neck meets the top of the chest. The neck wound penetrated through the skin and soft tissue, transected the thyrocervical trunk artery, and punctured the top of the left chest cavity and left lung. Carrasco lost about 1,250 milliliters of blood, which collected in the left chest cavity. The neck wound was two and three-quarters inches deep and one and five-sixteenth inches long. Dr. Miller opined that the manner of death was homicide and the cause of death was the stab wound to the neck.

II. *Defense evidence*

⁵ On August 25, Burbank police officers found a bloody knife in the area of Interstate 5 at Buena Vista near Hollywood Way. The DNA profile obtained from a bloodstain on the knife blade matched Carrasco's profile; defendant and Lowe were excluded as contributors. The profile of a second DNA sample obtained from the knife blade also matched Carrasco's profile.

In August 2015, Jack and Helene Siebert⁶ lived next door to Lowe. On August 23, at 6:30 p.m., the Sieberts were having dinner in their kitchen. The kitchen door was opened to the outside. Jack heard a woman's voice coming from Lowe's house, but he did not know what the woman had said. Jack heard Lowe say, "Shut the 'f' up." Jack did not recall telling the police that the woman said, "Brian." Helene heard a woman's voice yell, "Stop." She did not recall telling the police that the voice said, "Stop. Don't do that." Earlier that day, Jack saw two women at Lowe's house. One drove a white Denali. Jack also saw a maroon CRV arrive at the house, leave, and then come back again.

Burbank Police Sergeant Stephen Turner interviewed the Sieberts on August 24. Helene had heard a female voice yell, "Stop. Don't do that" at around 6:30 p.m. or 7:00 p.m. on August 23. She had also heard a male voice that she believed was Lowe's. Jack heard a young woman scream, "Brian, don't do that. Please, Brian, leave me alone," and then heard Lowe say, "Shut your f-word now." Helene estimated that the argument lasted about 10 minutes. Jack had seen a maroon SUV in front of Lowe's house earlier that day, but it was not there when the argument occurred.

III. *Rebuttal evidence*

Detective Terrill testified as video surveillance footage was shown to the jury. On August 23, at around 3:04 p.m., the Honda CRV was parked in front of Lowe's house. A male exited the car, reached down to the ground, walked in front of the car, and then

⁶ Because they share the same last name, we refer to the Sieberts by their first names. No disrespect is intended.

walked toward the entrance of Lowe's house. The figure then walked back to the passenger's side of the car, where "something [was] happening." The figure eventually walked back to Lowe's house.

At 3:35 p.m., a white SUV drove up and parked behind defendant's car. A female exited the passenger's side and walked down the sidewalk. Another female exited from the driver's side of the SUV and ran towards Lowe's house. Four minutes later, a woman resembling Carrasco walked to the white SUV but stopped before reaching it. She turned and walked up the driveway of Lowe's house.

At 5:41 p.m., defendant's car pulled up and parked in front of Lowe's house. For several minutes, nothing happened; no one exited the car. A male and female figure eventually entered Lowe's house. At 5:59 p.m., a male figure exited the house, got inside defendant's car, and drove away. The car returned at 6:49 p.m. A male figure, wearing dark baggy shorts, exited the car and walked towards Lowe's house.

At 7:11 p.m., a male figure wearing shorts and a dark shirt jogged onto the grass, ran around defendant's car, and walked back towards Lowe's house. Then, at 7:20 p.m., the same male figure entered the car on the driver's side and closed the door. Twenty minutes later, Lowe exited his house and stood by the passenger's side of defendant's car.

DISCUSSION

I. *Substantial evidence supports defendant's conviction of first degree murder*

In his supplemental opening brief, defendant argues that insufficient evidence supports the jury's finding that Carrasco's murder was premeditated and deliberate.

A. Standard of review and relevant law

When considering a challenge to the sufficiency of the evidence supporting a conviction, an appellate court reviews the entire record in the light most favorable to the judgment to determine whether it contains reasonable, solid, and credible evidence from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (2015) 60 Cal.4th 966, 988.) A reviewing court does not invade the province of the jury by reweighing the evidence, or by rereconciling competing circumstances and redrawing competing inferences from those circumstances; it is the jury—not the appellate court—that must be convinced of the defendant's guilt beyond a reasonable doubt. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1055–1056.) “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.) The appellate court must affirm the verdict if a rational trier of fact could find premeditation and deliberation beyond a reasonable doubt. (*People v. Pride* (1992) 3 Cal.4th 195, 247.)

“All murder that is perpetrated . . . by any . . . kind of willful, deliberate, and premeditated killing . . . is murder of the first degree.” (§ 189, subd. (a).) A finding that a murder was

premeditated and deliberate requires more than a showing of an intent to kill. (*People v. Harris* (2008) 43 Cal.4th 1269, 1286.) ““Deliberation” refers to careful weighing of considerations in forming a course of action; “premeditation” means thought over in advance.” (*People v. Sandoval* (2015) 62 Cal.4th 394, 424.) What matters is “the extent of the [defendant’s] reflection,” not the “duration of time” in which it takes the defendant to act. (*Ibid.*) Premeditation and deliberation can take place over a quick interval. (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1069.)

Courts consider three nonexhaustive factors when assessing whether a defendant committed murder with deliberation and premeditation: (1) motive, (2) planning activity, and (3) manner of killing. (*People v. Cage* (2015) 62 Cal.4th 256, 276.) “[T]hese categories of evidence, borrowed from *People v. Anderson* (1968) 70 Cal.2d 15, 26–27, “are descriptive, not normative.” [Citation.] They are simply an “aid [for] reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse.” [Citation.]’ [Citation.]” (*People v. Elliot* (2005) 37 Cal.4th 453, 470–471.) “A first degree murder conviction will be upheld when there is extremely strong evidence of planning, or when there is evidence of motive with evidence of either planning or manner.” (*People v. Romero* (2008) 44 Cal.4th 386, 401.)

B. Analysis

Applying these legal principles, we conclude that substantial evidence supports the jury determination that Carrasco’s murder was premediated and deliberate. Defendant drove to Lowe’s house, parked a block away, and then entered the house, possibly with a knife. Just prior to the murder, Lowe saw

defendant with a knife in his hand. Defendant then fatally stabbed Carrasco twice before leaving Lowe's house.

Urging us to reverse, defendant argues that “the evidence of planning, motive, and the manner in which the killing took place, when viewed singly or cumulatively, fails to reach the level of credible evidence to support a finding that [his] culpability should extend beyond second degree murder.” We disagree.

First, there is ample evidence of planning. Defendant, who normally parked his car in front of Lowe's house, parked his car around the block and walked to Lowe's house on the night of the murder. (*People v. Perez* (1992) 2 Cal.4th 1117, 1126 [planning activity “shown by the fact that defendant did not park his car in the victim's driveway”].) He also appeared to be carrying an object, which could have been a knife, as he entered and departed from Lowe's house. In fact, when Lowe saw defendant in the kitchen just before the murder, defendant had a knife in his hand. That defendant “carried the fatal knife into the victim's home” made it “reasonable to infer that he considered the possibility of homicide from the outset.” [Citation.]” (*People v. Steele* (2002) 27 Cal.4th 1230, 1250.) And, there was evidence in the note that defendant wrote to Rodriguez on August 16, suggesting that he had planned Carrasco's murder. After all, he told Rodriguez that he had “to take care of things” and was going to Lowe's house to do so. All of this evidence supports the jury's finding that Carrasco's murder was planned.

Second, there is substantial evidence that defendant had a preconceived design to kill, principally from the manner in which he killed Carrasco. He stabbed her twice—once in the shoulder and once in the neck. “A violent and bloody death sustained as a result of multiple stab wounds can be consistent with a finding of

premeditation. [Citation.]” (*People v. Pride, supra*, 3 Cal.4th at p. 247.) Moreover, the stab wound was almost three inches deep, severed a major artery in Carrasco’s chest, entered her chest cavity, and punctured her lung. This evidence strongly supports a finding that the “manner of killing was so particular and exacting that the defendant must have intentionally killed according to a ‘preconceived design’ to take his victim’s life in a particular way.” (*People v. Anderson, supra*, 70 Cal.2d at p. 27.) And, the location of the wound in the neck, a particularly vital and vulnerable area, was strong evidence of planning. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1082.) Finally, that defendant stabbed Carrasco more than once showed that he had time to reflect between each action. (*People v. Williams* (2018) 23 Cal.App.5th 396, 410 [manner of killing evinced deliberation, where victim suffered “two neck stabs, with an implied interval to reflect”].)

Third, there is sufficient evidence of motive. Defendant and Carrasco had a volatile relationship. On one occasion, he told Rodriguez that he believed that she was sending people after him. Another time, in the early morning hours on the day Carrasco was killed, Qubain heard defendant and Carrasco arguing; defendant believed that Carrasco had filmed him with a cell phone and he accused her of being a “nar[c].” Qubain then heard Carrasco yelling “Let me go. Let me go,” before everything went quiet. Later that day, defendant and Carrasco had a loud argument about activating his cell phone. Defendant’s fear that Carrasco was “after him” coupled with his anger towards her provided a motive for him to kill her.

II. *Substantial evidence supports the weapon enhancement*

Defendant argues that the true finding on the deadly weapon enhancement is not supported by substantial evidence because the appellate record does not demonstrate that he displayed a knife in a menacing manner during the commission of the murder.

A. Substantial evidence and relevant law

We review the sufficiency of the evidence to support an enhancement using the same standard we apply to a conviction. (*People v. Wilson* (2008) 44 Cal.4th 758, 806.)

As set forth above, the information alleged that defendant personally used a deadly and dangerous weapon, a knife, pursuant to section 12022, subdivision (b)(1), in the commission of Carrasco's murder. Pursuant to that section, "A person who personally uses a deadly or dangerous weapon in the commission of a felony . . . shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense." (§ 12022, subd. (b)(1).) As the jury was instructed, "Someone *personally* uses a deadly or dangerous weapon if he or she intentionally does any of the following: [¶] Displays the weapon in a menacing manner."

In determining whether a knife is used in a menacing manner, we may rely on cases that address the use of a firearm in the commission of a felony. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1198, overruled in part on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.) A weapon "is displayed when, by sensory perception, the victim is made aware of its presence. Once displayed in such fashion, the threat of use sufficient to produce fear of harm becomes a use of that" weapon

proscribed by the weapon-use enhancement. (*People v. Jacobs* (1987) 193 Cal.App.3d 375, 381.) In other words, the display of the weapon, coupled with a threat to use it which produces fear of harm in the victim is sufficient to support a finding that a weapon has been displayed in a menacing manner. (*Ibid.*; see also *People v. Wilson, supra*, 44 Cal.4th at p. 807.)

B. Analysis

Applying these principles, we conclude that substantial evidence supports the jury's finding that defendant personally used a knife in the commission of the murder. The evidence indisputably shows that defendant used a knife to fatally stab Carrasco. (*People v. Masbruch* (1996) 13 Cal.4th 1001, 1012 ["[a] firearm use enhancement attaches to an offense, regardless of its nature, if the firearm use aids the defendant in completing one of its essential elements"].)

Notably, defendant stabbed Carrasco in the front side of her body and in her shoulder and neck. Based upon these injuries, a jury could reasonably infer that Carrasco saw the knife before defendant stabbed her with it. In any event, by bringing the knife "into play," defendant escalated the danger of a violent injury to Carrasco, thereby supporting the jury's true finding on the knife use enhancement. (*People v. Granado* (1996) 49 Cal.App.4th 317, 327; *People v. Hajek and Vo, supra*, 58 Cal.4th at p. 1198.)

III. *Defendant is entitled to one additional day of actual custody credit*

Defendant contends that the trial court erred in calculating his presentence custody credits: The trial court awarded him 1,382 days of presentence custody credit, but defendant claims that he should have received 1,383 days. The People agree.

We agree with the parties. As a general rule, the time credited includes the date of arrest, the date of sentencing, and every day in between. (*People v. Smith* (1989) 211 Cal.App.3d 523, 525–526; § 2900.5, subd. (a).) Here, defendant was arrested on August 24, 2015, and sentenced on June 6, 2019. That time span is 1,383 days of actual custody. Because the trial court only awarded defendant 1,382 days of presentence custody credit, he is entitled to an additional day of actual custody credit.

DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court with directions to amend the abstract of judgment to reflect 1,383 days of presentence custody credit.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT